# 1996 Appellate Review of MERC Decisions

*Complied by ALJ Roy L. Roulhac*

## Michigan Supreme Court

**Port Huron Education Assn v Port Huron Area School District**, (452 Mich 309, 7/16/96). Overrules *Mid-Michigan Ed Assn. v St Charles Comm School, 150 Mich App 763* (1986), and resolves the question of whether a past practice contrary to unambiguous contract language creates a term and condition of employmentwhich required the employer to bargain before changing or abolishing. Holds that where contract is silent or ambiguous, a past practice may constitute a term and condition of employment merely by "tacit agreement" or inference. However, unambiguous contract language controls unless the past practice is so widely acknowledge and mutually accepted that it creates a contract amendment. The party asserting that the contract language controls has burden of proving that the parties had a meeting of the minds and intentionally chose to reject the negotiated contract and knowlingly acted in accordance with past practice. The court overruled MERC's determination that the employer knew or should have known that it was paying full health benefits contrary to unambiguous contract language providing for proration. The employer claimed mistake and no direct evidence was presented that the employer actually knew it had paid benefits contrary to the contract language. MERC's decisions appear at 1990 MERC Lab Op 903 and 1995 MERC Lab Op 42, on remand.

**Detroit Police Assn v City of Detroit**, **(**452Mich 339, 7/16/96). The court applied the test set forth in the companion case, *Port Huron, supra*, and held that Board of Trustees' practice, dating to 1941, of delegating responsibility for determining questions of duty-relatedness of injuries and incapacity of employees to work to the medical director and medical board of review was an intentional and knowing rejection of unambiguous contract/charter language. It affirmed MERC's finding that the employer had unlawfully unilaterally changed terms and conditions of employment by limiting the delegated authority to only questions of incapacity to work. See 1993 MERC Lab Op 424 for MERC's opinion which reversed ALJ's finding that the charter allowed the Board of Trustees to determine duty-relatedness and therefore no unfair labor practice was committed.

**Grandville Municipal Executive Assn v City of Grandville**, (453 Mich 428, 10/14/96). The Court, in lieu of granting leave, vacated the judgment of the Court of Appeals and remanded the case to MERC. The Court of Appeals, in an opinion which chastised MERC for failing to follow the court's precedent, concluded that executive employees have the right to organize and bargain. The Supremes concluded that since MERC had altered its definition of an executive in *Ingham Co. Road Comm*, 1995 MERC Lab Op 306 and *Detroit Police Dept*, 1996 MERC Lab Op 84, remand was appropriate.

## Michigan Court of Appeals

**AFSCME v Michigan Dept of Mental Health and Quality Living Systems, et al (various residential care facilities)**, (215 MA 1, 1/12/96, published). Vacates MERC's directions of election. Holds that MERC's jurisdiction is preempted by the NLRA or the NLRB's jurisdiction is arguable, and an insufficient showing has been made that the NLRB would decline to assert jurisdiction. The Court relied on *Management Training Corp v Teamsters*, 317 NLRB No. 190 (7/29/95), where the NLRB abandoned its practice of basing its decision on whether to take jurisdiction on whether the employer is capable of engaging in meaningful collective bargaining in view of its relationship to the government agency. According to the Court of Appeals, the NLRB will take jurisdiction as long as the employer meets the definition of an "employer" under the NLRA and meets the applicable monetary jurisdictional standards. The NLRB said it would not employ a joint employer analysis to determine jurisdiction.

**Melvindale-Northern Allen Park Federation of Teachers v Melvindale-Northern Allen Park Public Schools,** (216 Mich App 31, 3/22/96, published). Affirms MERC's decision, on remand, that an employer does not violate its duty to bargain in good faith by refusing to meet while its employees are engaged in an illegal strike. MERC, with Tanzman dissenting, first made this finding in 1992. The Court then remanded to MERC for further explanation and clarification of its conclusion, which overruled precedent beginning with *Saginaw Twp Bd of Ed*, 1970 MERC Lab Op 127. MERC"s first opinion appears at 1992 MERC Lab Op 400. The opinion on remand is at 1995 MERC Lab Op 53.

**Robert A. Quinn v POLC and POAM,** (216 MA 237, 4/5/96, published). The Court reverses MERC's finding that the POLC had a duty to continue processing a grievance filed while it was the bargaining representative after it was replaced by the POAM and remands for further action. Quinn filed charges against both unions after they both disclaimed responsibility for his grievance. The Court said the POAM became the bargaining representative at the time it was certified and that after that point the POLC owed no further duty of fair representation to Quinn. MERC's opinion is published at 1994 MERC Lab Op 828.

**Pinckney Community Schools bus Drivers Assoc. V Pinckney Bd of Ed** (216 MA 363, 4/19/96, published). Employer does not commit an unfair labor practice by giving the union notice of its intent to terminate an expired agreement where the duration clause stated that it was to continue for a specified period or until a successor agreement is reached. The Court concluded that the two clauses were connected disjunctively and the contract expired upon the occurrence of either contingency. No notice necessary because the contract expired on the date specified in the contract. MERC's opinion appears at 1994 MERC Lab Op 376.

**Chief Deputies Union v Menominee County, et al,** (COA No. 177145, Unpublished). Affirms dismissal of charge alleging that the Employers unlawfully refused to recognize Charging Party's unit. A new clerk/register of deeds replaced two chief deputies whom the lame duck clerk/register had recognized as a bargaining unit. The county, found by MERC to be a co-employer, refused to recognize the unit without MERC's certification. MERC's opinion appears at 1994 MERC Lab Op 572.

**United Auto Workers, Local 1688 v Central Michigan Univ.** (217 MA 136, 6/7/96, published). Affirms MERC's finding that paid release time to engage in union activities is a man mandatory subject of bargaining. MERC's opinion appears at 1994 MERC Lab Op 597. Leave to appeal denied, 453 Mich 883 (1996).

**University of Michigan v AFSCME Council 25**, (COA No. 176332, 7/12/96, unpublished). Employer committed an unfair labor practice by removing ten animal aide positions from AFSCME's unit without consent. MERC's opinion is at 1994 MERC Lab Op 391 and 713.

**Jackson County Deputies Assoc, v Jackson County Sheriff's Department,** (COA No. 174820, 7/9/96, unpublished). Sworn, uniformed (but not certified) corrections officers and animal control officers are not subject to Act 312. MERC's opinion is at 1994 MERC Lab Op 278.

**Lawrence J. Vanwasshenova v County of Monroe and Monroe County Prosecutor**, (COA No. 183361, 7/27/96, unpublished). The Court affirmed MERC's decision that Charging Party failed to establish a *prima facie* case that he was discharged from his assistant prosecutor position because of his union activity. MERC's decision appears at 1995 MERC Lab Op 63.

**St Clair Intermediate Schools v Intermediated Education Association, et al**, (218 MA 734, 9/17/96, published). Affirms MERC. MESSA acted as MEA's agent by increasing the maximum lifetime benefit for employees' health plan coverage. MEA's actions constituted an unlawful mid-term modification of its agreement. MERC's opinions appear at 1993 MERC Lab Op 101 and 1994 MERC lab Op 1167 (Decision and Order on Remand).

**Norman Dickson v Farmington School District and Farmington Ass. Of School Administrators**, (COA No. 187348, 9/27/96, unpublished). MERC affirmed. A prior circuit court finding that the union did not violated its duty of fair representation by agreeing to an oral modification of the collective bargaining agreement was *res judicate*. Moreover, the employer did not illegally dominate the Union. MERC's opinion is published at 1995 MERC Lab Op 277.

**MEA v Alpena Community College**, (COA No. 180695, 11/8/96, unpublished). Reverses MERC's order directing an election to accrete a residual unit of miscellaneous non-instructional professional and technical employees to MEA's existing clerical unit. According to the court majority, the employees "are simply too diverse to be considered to have a community of interest." The dissent noted that the employer had not set forth an alternative unit or set forth where the various positions belongs and MERC had found the employees covered by the petition to include all of the college's remaining unrepresented support positions. MERC's opinion is published at 1994 MERC Lab Op 955.